UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/6/Add.1
16 September 1996

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Robert Garretó, in accordance with Commission resolution 1996/77

Addendum

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I. INTRODUCTION

A. Mandate of the Special Rapporteur and ethnic conflicts in Northern Kivu 1/

1. One of the features of most concern to the Commission on Human Rights in the human rights situation in Zaire has been the ethnic conflicts in the Northern Kivu region.

2. In resolution 1994/87, adopted at its fiftieth session, the Commission professed itself "concerned about the persistent seriousness of the situation of human rights in Zaire" and "seriously concerned" at reports of "forced displacements of more than 750,000 persons belonging to ethnic minorities, especially in the provinces of Shaba and Northern Kivu, as well as the heavy loss of human life and other numerous violations of human rights accompanying such displacements". It went on to reiterate its "loathing of all forms of racial or ethnic discrimination"; and to condemn the practice of forced population displacements, particularly in Northern Kivu and Shaba, "for which the authorities [bore] primary responsibility", and "all discriminatory measures affecting persons belonging to minority groups". The Commission invited its Chairman to appoint a special rapporteur to report on developments in the human rights situation in Zaire at its fifty-third session.

3. The Special Rapporteur submitted the report requested (E/CN.4/1995/67), in which paragraphs 85 to 95 were dedicated to "ethnic conflicts in Northern Kivu".

4. At its fifty-first session the Commission passed resolution 1995/69 by which, besides renewing the Special Rapporteur's mandate for one year, it again professed itself "also seriously concerned at the worsening of ethnic confrontations in Kivu, following the arrival of new Rwandese refugees", and reiterated its condemnation and loathing of all forms of racial or ethnic discrimination.

5. The Special Rapporteur's second report (E/CN.4/1996/66 and Corr.1) again took up the "continuation of ethnic conflicts in Northern Kivu" (paras. 23 to 32, 122, 123 and 130).

6. At its fifty-second session the Commission, by resolution 1996/77, again renewed the Special Rapporteur's mandate and once again voiced serious concern at the worsening ethnic conflict in Kivu and its loathing of all forms of racial or ethnic discrimination.

B. Purpose of the visit

7. A number of reports of worsening conflict prompted the High Commissioner for Human Rights to ask the Special Rapporteur to conduct an investigation on the spot. The reports indicated that acts of violence in Rutshuru, Masisi, Walikale and elsewhere were driving large numbers of Zairian refugees into Rwanda. The principal object of the mission was to visit the area of conflict and the refugee camps in Rwanda in order to arrive at recommendations on how to deal with the violence in the region.

C. Lack of cooperation from the Government of Zaire

8. On 24 June 1996 the Special Rapporteur asked the Government of Zaire, through the Permanent Mission of Zaire to the United Nations Office at Geneva, for cooperation in arranging for him to visit the country. He said he would travel between 8 and 12 July and was interested in meeting the Zairian authorities to tell them what he had found on the spot or - if the Government preferred - to discuss matters with them before going to the conflict region.

9. The Government of Zaire did not give a timely reply to the Special Rapporteur's request. Only on Sunday, 14 July 1996, when the visit had taken place, did the Ministry of Foreign Affairs contact the Special Rapporteur to tell him that it would be unable to receive him on the dates proposed owing to preparations for forthcoming elections and the fact that two large United Nations missions would be there at the same time, thus making it difficult to comply with his suggestion. The Special Rapporteur was thus prevented from learning the Government's position on the incidents he was investigating, and this he regrets sincerely. He hopes that the reply received does not reflect the Government's lack of interest in cooperating with part of the machinery of the Commission on Human Rights, which he mentioned in his report (E/CN.4/1996/66, paras. 8 and 119).

D. The visit

10. The Special Rapporteur's visit, which was limited to Rwanda, took place between 6 and 14 July 1996. The Rapporteur had at his disposal a detailed preliminary study by the Rwandan office of the High Commissioner for Human Rights on the problems produced by the influx of refugees, whose well-founded fears of persecution in their home country derived from acts of violence inspired by policies of discrimination and ethnic cleansing. He also had before him a large number of reports on violence in Northern Kivu from intergovernmental organizations and from national and international non-governmental organizations.

11. The Special Rapporteur had meetings in Kigali with the office of the High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, and representatives of the European Union and the International Committee of the Red Cross.

12. In Gingensi, across the frontier from Goma, the capital of Northern Kivu, he met staff from the regional offices of the High Commissioner for Human Rights and the United Nations High Commissioner for Refugees. He visited the Zairian refugee camp of Petite Barrière or Umubano, and the transit camp in Nkamira. He also visited the ETAG prison where he met exiled Zairian prisoners.

13. Officials from many Zairian and international non-governmental organizations with offices in Zaire travelled to Gisenyi to meet the Special Rapporteur, and they provided him with important information.

II. ORIGINS OF THE VIOLENCE IN NORTHERN KIVU

A. Historical background

14. The Northern Kivu region, about as big as Rwanda and Burundi combined, is according to some sources inhabited by around 3 million people, about half of whom are Banyarwanda 2/ people who speak Kinyarwanda and belong to the Hutu, Tutsi or Twa ethnic groups. In some districts, such as Masisi and Bwito, the Banyarwanda are in the majority, making up as much as 80 per cent of the population before the influx of Rwandese refugees in 1994.

15. As the Special Rapporteur's first report said (E/CN.4/1995/67, para. 86), tribal problems in this part of Zaire stem from the borders of the country established by the Act of Berlin of 1885 and the Brussels Convention of 11 August 1910, which left many people from the neighbouring State of Rwanda annexed to the Belgian Congo.

16. In any case, it seems that the ethnic groups to which these people belong have long been found in what is now Zaire.

17. Some sources say that the area of the current conflict (Rutshuru, Goma, Karisimbi, etc.) were added to the Kingdom of Rwanda between 1510 and 1543. Others add that the King of Rwanda (Mwami) lived in what is now Rutshuru. Certainly the Mwami wielded authority over all the ethnic groups today considered Rwandese-speaking: the Hutus (the majority), the Tutsis and the Twa, which have long inhabited the rich lands of Rutshuru and Masisi.

18. Despite this, and although their citizenship has not so far been called into question, these peoples continue to be regarded as "non-locals", for the Zairian authorities consider only the Bakonjo, Banbuba, Bahunde, Bapere, Bakomo, Babira, Banyanga, Banande, Balendu and Batembo to be local in Northern Kivu.

19. A second group of Banyarwanda in Zaire, known as the "immigrants", are those who fled Rwanda to escape the famine that followed the First World War and those resettled by Belgian colonists during this century, particularly in 1911, 1930, 1939, 1948 and 1954, to satisfy the need for labourers: native Rwandans were settled in Northern Kivu (particularly Masisi) and Southern Kivu, and even in Katanga (modern Shaba). In Masisi they became the majority and numbered between 450,000 and 600,000. The Banyarwanda Immigration Mission, which was founded in 1948 by the Belgian authorities and operated until 1955, gave the displaced Rwandans land to work, and this was not welcomed by the "indigenous" locals. These are the group most directly affected by the nationality problem.

20. A third group of Banyarwanda are refugees of Rwandan nationality who fled to Zaire to escape revolution, violence and ethnic conflict in 1959 (the overthrow of King Kigeri V), 1960, 1961, 1963, 1967, 1972 and the attack by the Rwandan Patriotic Front in 1990. Practically all the members of this group have returned to Rwanda and rejoined their original families or are in the course of doing so. Nationality for them is not the problem that it is for the other two groups. 3/

21. A fourth group are the Rwandese refugees, mainly Hutus, who fled Rwanda and the victorious Rwandan Patriotic Front in 1994; they are mostly to be found in refugee camps in Northern and Southern Kivu; the Special Rapporteur has discussed their situation in his reports (E/CN.4/1995/67, paras. 96 to 103; E/CN.4/1996/66, paras. 43 to 54).

B. Conflicts before the arrival of the Rwandan refugees

22. Before events in Rwanda in 1994, these ethnic groups had, generally, lived peacefully together with much intermarriage. Schools were communal and solidarity was the rule. True, there are records of numerous instances of inter-ethnic violence between the "indigenous", "original" or "real" inhabitants, on the one hand, and the Banyarwanda on the other, and between Tutsis and Hutus. Examples of this were the Kinyarwanda revolution in Bwito in 1964; fights pitting Bahunde and Banande against Batutsi, leaving dozens of dead; the Banyarwandas' boycott of the local assemblies in 1982 and 1987; and ethnic violence in Northern and Southern Kivu following the outbreak of war in Rwanda in 1990, which led to illegal arrests, cattle-stealing and houses being burnt down. But these were mostly isolated incidents and rather out of the ordinary.

23. The greater problems stemmed from politics and nationality, as the Special Rapporteur's first two reports indicated (E/CN.4/1995/67, para. 87, and E/CN.4/1996/66, para. 24).

24. As regards the politics, the Banyarwanda form the majority in both Masisi and Rutshuru and, in the case of the Tutsi minority, are economically stronger and growing more so with the acquisition of land that formerly belonged to "indigenous" inhabitants; this in turn has given them greater educational opportunities. Nevertheless, political power continued to be reserved for the original inhabitants, particularly the Hunde, both locally (district assemblies, etc.) and nationally.

25. The Special Rapporteur's first report relates a series of events pitting Hundes and Nyangas against Hutus in Masisi, Bwito, Lubero and Walikale after March 1993, leaving some 3,000 people dead and 150,000 homeless, and mentions the attack on Ntoto market in particular (E/CN.4/1995/67, para. 90). It should be added that this latter incident occurred after the then Governor of Northern Kivu had said that the true indigenous inhabitants should be helped by the security forces to "exterminate" the Hutus.

1. The problem of nationality

26. The immense nationality problem was covered by the Special Rapporteur in his first two reports. Paragraphs 88 and 89 of the first report (E/CN.4/1995/67) read: "From a legal standpoint, legislation on nationality is one of the main causes of the ethnic conflict. Decree Law No. 71-020 of 26 March 1971 granted nationality on a collective basis to the Banyarwanda who thereby acquired certain rights, such as the right to vote and to stand for election. However, Law No. 81-002 of 29 June 1981 amended previous legislation, granting Zairian nationality solely to those who could prove that their ancestors had lived in Zaire since 1885. The application of this Law, because of its retroactive nature, would revoke the rights acquired by the

Banyarwanda. Under the new Law, moreover, each individual would have to submit a formal application for naturalization. Owing to the reaction caused by this Law, the National Sovereign Conference ruled that it would be applied after having been amended in favour of the population and that, in nationality matters, the Transitional Government should respect acquired rights in order to prevent statelessness. It would appear that recent ethnic confrontations were due in part to the fact that the Hunde and Nyanga disagreed with this decision." It should be added that the 1971 Law had only confirmed previous rulings such as the resolution of the 1960 Round Table, before independence, and the 1964 Luluaburg Constitution.

27. At the National Sovereign Conference in 1991 and 1992, Banyanga and Batembo representatives tried to settle the nationality problem in a restrictive sense.

28. In any event, the 1981 law did not in practice affect the daily lives of the Banyarwanda in the second group because their Zairian identity cards were not taken away.

29. For the rest, denying Zairian nationality to Banyarwanda is not only a violation of human rights and general principles of law (E/CN.4/1996/66, paras. 84 and 95) but does a violence to Zaire's own recent history. The Special Rapporteur has drawn up a preliminary list of political, church and university leaders who are Banyarwanda either because their forebears lived in Zaire before 1885 or because they came to the area during the present century: they include both Hutus and Tutsis. 4/

2. Rivalry between Hutus and Tutsis in Zaire

30. Besides the problem of power and nationality which sets the Banyarwanda against the "original" ethnic groups, there is a dispute within the Banyarwanda between Tutsis and Hutus, which has been exacerbated by the inter-ethnic conflict in Rwanda and Burundi. Concerned at their lack of power, the Banyarwanda have decided to venture into politics. Although for the most part they are Hutus, the person who has attained the highest office is Barthelemi Bizengimana, a Tutsi who rose to be the director of Marshal Mobutu's cabinet. Tutsis are more strongly represented than Hutus in the former Parliament, the National Sovereign Conference and the current Supreme Council of the Republic-Transitional Parliament.

31. Finding themselves outweighed politically and economically by their Tutsi brethren, the Hutus formed a variety of groups, most notably the Virunga Farmers and Herders Association (Mutuelle des Agriculteurs et Eleveurs du Virunga (MAGRIVI)) founded in 1989 by, among others, Sekimonyo wa Magango, the current Minister for Higher Education and Scientific Research, which was given strong backing by President Habyarimana's regime in Rwanda. The Special Rapporteur has been told that, starting in 1992, the Association sold farm produce to invest in weapons and took part in the 1994 genocide.

32. The impending establishment of a democratic regime in Zaire and the need to secure positions of power within it aggravated the conflict.

33. The tensions and violence were unleashed before the massive influx of refugees, as can be seen from Commission on Human Rights resolution 1994/87 of 9 March 1994, antedating the plane crash which cost the Presidents of Rwanda and Burundi their lives. It is maintained that the support that Zairian Tutsis and Tutsi refugees in Zaire gave to the Rwandan Patriotic Front during the 1990 civil war in Rwanda helped to radicalize MAGRIVI. The Tutsi community in Zaire welcomed Marshal Mobutu's assistance to President Habyarimana, in coping with attacks from the Hutus in Zaire.

C. Current state of the conflict

1. The Hutu-Tutsi conflict in northern Kivu

34. The arrival of 1.2 million Rwandan refugees since July 1994 has fuelled the violence already taking place. The refugees include many who were involved in the Rwandan genocide. Many arrived with weapons and large amounts of property stolen from the Government, including buses donated by foreign Powers; the buses circulate freely in Zaire, as the Special Rapporteur observed during his two visits to the country (1994 and 1995).

35. The Special Rapporteur was told that MAGRIVI, whatever its original welfare or cultural objectives, has changed or been consolidated into a militia bent on winning power for the Hutus and has worked closely with the Interahamwe (those who attack together). In the long run its objective is to establish a Hutuland, a racially pure area dominated by Hutus.

36. Before the refugees arrived MAGRIVI was in dispute with the Hunde and the Tutsi tended to remain neutral, but since 1994 the Association has taken on quite a different character.

37. All the evidence gathered by the United Nations Human Rights Field Operation in Rwanda in preparation for the Special Rapporteur's arrival, and information given to the Special Rapporteur by Zairian refugees in Rwanda known as Abanyejomba, after the district they come from, shows that since mid-1994, relations among the Banyarwanda have deteriorated as the Rwandan conflict has shifted to Zaire.

38. The Hutu militia known as the Interahamwe have been the main instigators of violence.

39. In his first report the Special Rapporteur remarked how dangerous the Interahanwe were, pointing out that they were difficult to identify and easily confused with the civilian population, that they were responsible for most of the massacres in Rwanda, that they were to be found in all refugee camps in Zaire, "especially in Mugunga, where it is believed that 80 per cent of the young people belonged to them", that they possessed firearms, communications equipment and vehicles, and that they opposed the voluntary repatriation of the refugees, whom they tyrannized and threatened (E/CN.4/1995/67, para. 96).

40. Since this militia formed, it has made constant incursions throughout virtually all of Northern Kivu; it has absolute liberty to mobilize anywhere, even in refugee camps, from where it has mounted sorties to infiltrate into Goma and thence into conflict areas such as Rutshuru, Masisi and the

neighbouring districts, attacking Tutsis and telling them they should go back to Rwanda where they are in power or to Ethiopia where, it is claimed, they came from. The Interahamwe have weapons and military training unsuspected by the Zairian Hutus, and have established a training camp in Katoyi, near Goma. They use not only large calibre firearms but also nail-studded clubs; the Special Rapporteur was able to see and photograph the brutal wounds left on a female refugee in the Petite Barrière camp. They have intelligence reports, since they frequently search out victims from pre-established lists. Their aim appears to be ethnic cleansing - ridding districts of Tutsis - and they therefore kill Tutsis, burn their houses, steal their cattle, drive them out or force them to seek refuge in Rwanda and other countries. A variety of sources interviewed by the United Nations Human Rights Field Operation in Rwanda and by the Special Rapporteur maintain that some Interahamwe elements have practised cannibalism. The Special Rapporteur met one witness who had personally been present during acts of cannibalism.

41. Accounts persistently link MAGRIVI with the Interahamwe. Weapons brought to Zaire by deserters from the Rwandan Armed Forces are said to be distributed by the Interahamwe to the MAGRIVI. According to sources, Hutu moderates have often been forced to take part in militia violence. This indicates a failure to comply with the Cairo Declaration of 28 November 1995, which called for the "bullies" to be removed from the camps (E/CN.4/1996/66, para. 30); confirmation would seem to come from the information that only 41 have been brought to Kinshasa. 5/

42. Besides the traditional enmity between these ethnic groups in Rwanda, a new ingredient has now been added: Hutu extremists are said to fear that Tutsis would back the Government in Kigali if they attacked their country.

43. It must be pointed out that the victims are not just Tutsi refugees who have arrived in the past three decades, nor just Zairians of Tutsi origin whose nationality is in doubt (who arrived between 1885 and 1959). There are also some whose forebears have lived in Zaire since time immemorial, a subject we shall return to later.

44. It is also important to point out that the presence of refugees in Zaire has had other adverse effects: on the economy, security and the environment, with an increase in violence and militarism, as described by the Special Rapporteur in his first two reports (E/CN.4/1995/67, paras. 97 to 103 and E/CN.4/1996/66, paras. 45 to 47).

2. Conflict between the Tutsis and the "indigenous ethnic groups"

45. There have also been numerous incidents between Tutsis and members of the Hunde, Nande and Nyanga ethnic groups. Originally, as has been seen, the Hutu MAGRIVI militia took on indigenous ethnic groups in political power. The Ntoto market incident in March 1993 and its aftermath were Hutu-Hunde disputes.

46. The arrival of the Rwandan refugees led to violence throughout the region, which the indigenous ethnic groups attributed to the Banyarwanda in general.

47. Young Bahunde set up a guerrilla group known as "May May" ("water" in Swahili), harking back ideologically to the nationalist and marxist groups of the 1970s and with a heavy reliance on magic. Bahunde youths had enrolled in guerrilla groups set up by Pierre Mulele (who succeeded Patrice Emery Lumumba) in the early 1970s and were joined by deserters from the Congolese Armed Forces led by Sergeant Mobuto Sese Seko. Defeated, they regrouped in the forest, preparing for revolution. As regards the magic element, they peddle religious and tribal artifacts said to make them invincible. They have rudimentary military training. The Special Rapporteur met a member of the May May guerrilla, a Hunde, who had joined after the attack on Mokoto Monastery in which his father, mother and seven brothers died of machete blows at the hands of the Interahamwe, and had eventually fled and taken refuge in Rwanda. He said that on enrolling recruits were tattooed (as the Special Rapporteur could see) "for protection", and that magic was present at every stage of the fighting: they drank herbs which protected them from death, they could not wash with soap, they went to war naked or dressed in grass; they yelled "May" when they attacked so that enemy bullets striking them would turn to water; they were not allowed carnal relations with women; in combat they could not retreat or even look sideways, and so forth. It should be noted that one of the rules says "in war you should never attack a civilian, only protect him". These points are confirmed by all the reports the Special Rapporteur had before him.

48. The principal enemy were the Bahutu, who had been attacking the Hunde for years. They were so fierce that even the Zairian Armed Forces (FAZ) tended to be afraid of them and flee rather than fight.

49. The May May often have other names linked to the regions they come from, such as the Ngilima May May (the best known) or the Bangirima May May.

50. There have also been serious confrontations between the May May and Tutsis since the latter, too, are Banyarwanda. The older Bahunde apparently still resent the Banyarwanda, while the younger ones, in the Ngilima militias, have often defended harried Tutsis against Hutu violence. This was confirmed to the Special Rapporteur by a member of the militia now hiding in Umubano, in Rwanda.

51. Some refugees in the Petite Barrière camp said they had been harassed in Walikale by the May May, who, one added, "were in cahoots with the Interahamwe". Most, however, had no complaints about the conduct of the May May, and indeed there are some Nglimima May May among the refugees. At least 25 refugees in the camp are not Tutsis but Hunde who also fled from Interahamwe-MAGRIVI harassment in Zaire.

52. The refugees stress that May May violence against Tutsis is not intended to eradicate them physically but to seize their land, cattle and other property in order to make money and acquire weapons so they can defend themselves from attacks by extremist Hutu militias and the Zairian Armed Forces. Other accounts say the intention is to drive the Tutsis out temporarily but that they should swiftly return when peace has been attained.

3. Conflicts between indigenous peoples and the Zairian Armed Forces (FAZ)

53. That the Zairian Armed Forces (FAZ) have been present during or have tolerated attacks by the Interahamwe on Tutsis and the Zairian population in general has turned the May May against them.

54. There have also been reports of conflicts between ethnic groups accepted as indigenous who have traditionally opposed the Mobutu regime and the Zairian Armed Forces. Such cases have been especially frequent where the ethnic groups have been defending besieged Zairian Tutsis.

55. The Zairian Government has made some effort to prevent incidents - operations Kimia ("calm" in Swahili) and Mbata ("slap in the face"), but to the Special Rapporteur's knowledge the Zairian authorities have never come out firmly against the establishment of a Hutuland.

56. Operation Kimia, carried out by some 800 FAZ members and the Service d'action et des renseignements militaires (SARM), began in March 1996 and initially restored calm in the Masisi district which the Tutsis had virtually abandoned, driven elsewhere by the Interahamwe and MAGRIVI. Although it might have been intended to disarm all the militias, in fact it was aimed chiefly at the May May.

57. But poor preparation and equipment and the failure to pay the FAZ troops involved in the operation eventually drove the troops to robbery, pillage and arson, particularly in the districts of Kanyabayonga, Walikale, Sake, Vitshumbi, Beni and Lubero. The terror inspired by the Ngilima May May drove some soldiers to flee, and many others died. FAZ High Command had to admit that operation Kimia had been a failure.

58. It therefore mounted operation Mbata, conducted principally by SARM and the Division spéciale présidentielle (DSP) (E/CN.4/1995/67, paras. 67 and 69), directly against the Ngilima May May. Refugees questioned at the Petite Barrière camp by the United Nations Human Rights Field Operation in Rwanda and by the Special Rapporteur emphasized that in the Interahamwe attack at Kitshanga on 8 April 1996 the DSP played a positive role, protecting the victims.

59. Overall, however, this was another failure: on 11 May 1996, 30 people were killed in Vitshumbi, while on 4 June around 20 people died in Kanyabayonga, according to officials from numerous national and international NGOs based in Goma (Zaire) who met the Special Rapporteur in Gisenyi. One witness interviewed by the Special Rapporteur, a Hunde woman whose husband and three of her sons had been killed and her house set on fire by Interahamwe from Mugunga refugee camp in September 1995, did not share the favourable view of the events in Kitshanga, stating that the "Zairian Armed Forces protected us but then were corrupted by the Interahamwe and became our enemies, and this was possible because they had neither the means, nor a radio, nor the courage to take them on".

4. Violent incidents in 1996

60. The Special Rapporteur was informed, by Zairian refugees, humanitarian organizations and various reports, of violent incidents that left many people wounded, causing violations of people's safety, property and other rights and population displacements in 1996. He regrets the list may contain errors, in part owing to the lack of cooperation from the Zairian Government which did not authorize him to visit the country and thus prevented him from hearing its explanation; in part also because many accounts obviously refer to the same incidents but differ in substance and detail. It has thus been necessary to exercise special caution in selecting the reports and accounts to follow up.

61. Besides those cited above, these incidents include:

(a) 25 January 1996: May May militias attack the centre of Bibwe, killing at least 10 Banyarwanda. During the night Interahamwe militias react, killing many Hunde. Apparently the Interahamwe suspected some Hutus of being traitors, because some of their own ethnic group were killed;

(b) February 1996: Hutu militias attack Sake, where the Hunde are in the majority. Many of the indigenous population are forced to take refuge in Goma;

(c) 4 March 1996: Hutu militias set fire to Tutsi houses in Bokombo, killing at least 10 people;

(d) March 1996: The Interahamwe attack a group of displaced Tutsis and Hunde who have taken refuge in the parish of Mweso. People coming to the assistance of the displaced persons are fired on;

(e) 14 March 1996: A May May attack on Katikwu (Walikale) followed by another in Mirigi. No indication of the number of victims, but many people forced to flee;

(f) 9 to 23 March 1996: Hutu fighters in Bwito, claiming that six of their comrades have disappeared, threaten Tutsis and Nande and then attack Bishusha before proceeding to Mashango where the local chief is captured, dismembered and parts of his body eaten. Eight people, all Tutsis, reported killed. The parish priest in Birambizo lends support;

(g) 27 and 28 March 1996: The Bangirima May May attack a village in Lubero, stealing Tutsi cattle;

(h) 28 March 1996: The Gendarmerie is attacked in Kanyabayonga. There are fatalities and around 3,000 people flee;

(i) April 1996: Nande attack Banyarwanda in Lubero for their property and cattle. In response, Hutus drive the Nande out of Rwindi. The number of dead is not specified, but there is talk of several dozen;

(j) 8 April 1996: The Interahamwe attack the centre of Kitshanga (Masisi), for six hours, leaving a great many dead, including one FAZ colonel,

burning houses and stealing animals. In this case the FAZ behaves properly, repelling the attack. Other sources say the attack was by Ngilima May May, and mention a figure of 250 dead;

(k) 10 April 1996: Zairian soldiers drive 950 Banyarwanda to the Rwandan frontier in buses which Rwandan Hutu refugees brought with them in 1994. They charge each person expelled the equivalent of US$ 12 for transport; those expelled include many whose roots in Zaire date back to before 1885;

(l) 11 April 1996: Interahamwe from Tongo attack Kitshanga, where they are repulsed by Hunde militia. The clashes leave many dead on both sides;

(m) 26 April 1996: Interahamwe attack the Hunde feudal settlement of Sake. At least three Hunde women die and many are wounded, and two hostages are taken by the attackers, who include FAZ personnel. Other sources indicate that over 10 people died;

(n) 11 May 1996: Some 30 people perish in an attack on Vitshumbi;

(o) 12 May 1996: Mokoto Monastery, where thousands of Zairian Tutsis have sought refuge, is encircled and attacked by indigenous Hutus, Interahamwe and MAGRIVI. The attacks are mounted using firearms, machetes, clubs with nails and grenades. The number of dead varies, according to the sources, between several dozen and over 700. Some corpses are found in a nearby lake. Some people display rifle wounds. Acts of cannibalism and mutilation of corpses are described. Parts of human bodies are displayed by the attackers as war trophies. Some survivors manage to flee and reach the city of Kitshanga, where they remain for several days. Witnesses relate having received help from Hunde militia and some well-intentioned Zairian soldiers, and from a Lebanese trader. But they maintain that "it all happened as if there were no authority in the country";

(p) May 1996: In Gihondo, Bwito, combined MAGRIVI-Interahamwe forces burn houses belonging to Tutsis and Hunde, who take refuge in Ikobo (Walikale); this provokes a reaction from the Ngilima, who attack MAGRIVI-Interahamwe forces in the protestant church in Singa. Some sources indicate around 500 dead. Further killings result from a reaction by the combined Hutu forces;

(q) 31 May 1996: Near Goma, three Zairian soldiers taking part in operation Kimia are attacked and killed by members of the Ngilima May May in Virunga Park in Rwindi. The Zairian Armed Forces are said to flee in fright. When the news reaches them, the authorities despatch two heavily armed military units to the area to attack the Ngilima, but in fact the units attack the Nyanga and Hunde civil population that day and the following days. "Many" dead, including 11 soldiers, are reported, besides pillaging and burning;

(r) 1 to 4 June 1996: in a reprisal for the incidents in Virunga, soldiers fire demonstration shots in Goma, sparking off violent confrontations with the civilian population. The upshot is five civilians and two soldiers dead, and a great many wounded;

(s) 4 June 1996: A clash in Kanyabayonga, leaving a total of some 40 dead. According to a number of national and international NGOs, the Zairian Armed Forces are largely responsible for the incident;

(t) 8 June 1996: Between 28 and 40 people die in an ambush apparently mounted by the Interahamwe in Bunangana. Preparations for the incident have begun some days previously, when a rich Hutu trader and his son go to Katale and Mugunga refugee camps to recruit Interahamwe, who distribute weapons to the Hutus in the region. After the attack, the Hutus display the severed heads of their victims;

(u) 11 June 1996: Thirty people die in Tshomba (Rutshuru) in an attack on the Tutsi population in Virunga Park;

(v) 25 June 1996: A Hutu attack on Kitshanga causes a great many deaths;

(w) 27 June 1996: A detachment of the Zairian contingent in Kibumba Camp is attacked, leaving dead a commander who was investigating incursions by the Rwandan Patriotic Army (APR). This sets off a wave of reprisals by FAZ against humanitarian organizations, simply because one witness claims to have heard someone "speaking Spanish";

(x) 1 July 1996: Spanish citizen Adolfo Fabregas, the coordinator of a humanitarian agency in Goma, is arrested near Kibumba Camp by Zairian soldiers of the United Nations-financed contingent 6/ and detained for 24 hours, during which he is beaten with sticks in the presence of the camp commandant. Two of his ribs are broken and he is denied all contact with UNHCR;

(y) 1 July 1996: A United States relief worker is detained and interrogated by the contingent for three hours;

(z) 2 July 1996: A Belgian official working for a European Union programme is detained near Katale and Kahindo refugee camps, struck in the face by a member of the contingent, and set free the following day;

(aa) 3 to 4 July 1996: Hunde attacks on Kajagari, Ngajo and Rujebeshi.

III. RESPONSIBILITY OF THE ZAIRIAN STATE

62. Article 2 of the International Covenant on Civil and Political Rights, to which Zaire is a party, requires States to respect, and to ensure to all individuals within their territory and subject to their jurisdiction, the rights recognized in the Covenant. It adds that those obligations must be honoured "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Lastly, "where not already provided for by existing legislative or other measures, each State party ... undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant".

63. The Special Rapporteur believes that, in the incidents described in chapter II, the Government of Zaire failed to honour the three basic obligations incumbent on it under that article.

A. Violation of the obligation to respect the rights recognized in the International Covenant on Civil and Political Rights

64. The Special Rapporteur wishes to indicate three areas in which the State has failed to honour its obligations:

1. Incitement to violence and racial or national hatred

65. The Bishop of Goma, Monsignor Faustin Ngabu, was right on 20 April 1996 to claim that he would later, on 2 May, have the support of all the bishops in Kivu (Bukavu, Butembo-Beni, Uvira and Kasongo) for the statement that "the authorities, which should be coming to the aid of victims of violence, seem on the contrary to wish to feed the flames".

66. The facts unfortunately confirm this opinion. In March 1993 the then Governor of Northern Kivu, Jean Pierre Kalumbo Mboho, said that the indigenous peoples should be helped by the Zairian Armed Forces to exterminate the Banyarwanda.

67. The Chief of Staff of the Zairian Armed Forces, General Eluki, said in November 1995 that the Nianga, Tembo and Nande were right to expel the Banyarwanda.

68. The present Governor of Northern Kivu, Christophe Motomupenda, maintained in May 1995 that "we should attack and attack the immigrants now", and then, on 12 April 1996, told a group of 973 Zairian Tutsis who had been driven into Goma, that "... if you do not wish to go we cannot guarantee your lives", adding that they had "the choice between expulsion or death". On 24 April 1996, he went on to say that there were "... no Zairian Tutsis among the returnees ...", and that all should leave. He disparaged the Catholic bishop for interfering in Government affairs - meaning Mgr. Ngabu's letter.

69. Moreover, the Minister of Social Affairs, Desiré Lumbulumbu, and the Minister of Higher Education and Scientific Research, Sekimonyo wa Magango, the latter a Hutu and one of the founders of MAGRIVI, went to Northern Kivu with a group of members of Parliament in late March; instead of calling for peace, they were unanimously understood to be advocating ethnic cleansing.

70. Reference must likewise be made to a letter from the Ambassador of Zaire to the United Nations claiming that Kinyarwanda is not a Zairian language but that of Rwandans transplanted by colonization since 1929, who have never integrated into the local population.

71. These attitudes contradict the Cairo Declaration of 29 November 1995 in which the Heads of State, including Marshal Mobutu, and the delegations present called on the international community to condemn vigorously the ethnic and political genocide ideology used in competition for conquest and monopoly of power.

72. The Special Rapporteur has also been told that the Minister of the Interior and Vice Premier, Kamanda wa Kamanda, together with Governor Motomupenda, visited Kanyabayonga on 31 March; the following day the violence and expulsions of Tutsis from the district increased. The Special Rapporteur records this incident because many different sources mentioned it, although he does not have the text of what the Minister is supposed to have said. The Special Rapporteur's personal knowledge of the Minister suggests that this is more likely to be a coincidence than case of incitement.

73. Unfortunately, incitement to racial and national hatred is not only to be found among government authorities; the same kind of incitement has been endorsed by the Supreme Council of the Republic - Transitional Parliament (HCR-PT) on 28 April 1995, as the Special Rapporteur mentioned in his second report (E/CN.4/1996/66, paras. 27 and 28).

74. The political class generally and some sectors of civil society display a dangerous anti-Banyarwanda attitude, as the Special Rapporteur recorded in paragraphs 26, 29, 33, 35 and 123 of his second report (E/CN.4/1996/66).

2. Direct involvement by the military and security forces

75. All the evidence and reports from intergovernmental and non-governmental organizations explicitly mention the involvement of the military and security forces in the attacks, pillaging and burning, as the Special Rapporteur mentioned in his first two reports. 7/ What is new is their involvement in expelling Zairians from the country.

76. The Zairian Armed Forces have clearly sided with the Interahamwe and Hutu militias in the fighting, and the efforts of the central Government to impose order through operations Kimia and Mbata ended in complete failure as described in paragraphs 55 to 59 above. There are even some reports that Interahamwe militias pay soldiers to take part, or at least to protect them during attacks. This was the case in attacks on the villages of Kanii and Loashi.

77. The presence of the Zairian Armed Forces has heightened the insecurity owing to their abuse of the local population and connivance at Hutu violence against Tutsis and Hunde.

78. The Zairian Armed Forces have also been accused of active involvement in internal displacements and expulsions of Zairian Tutsis, in what is known as "Operation Café". Their involvement ranges from direct threats if Tutsis remain in the country to arrests and the transport of Tutsis in military buses from various districts to Goma or straight to the frontier. The buses used in these operations belong to Rwanda but were taken with them to Zaire by refugees. Members of the armed forces demand payment from their victims (roughly the equivalent of US$ 12 or US$ 15) for transporting them to the Rwandan border.

79. One particularly serious matter reported by refugees in the Umubano camps is that Zairian soldiers, whether from the armed forces or SNIP, take away the identity cards of those they expel when they leave them at the border: this prevents them from returning to Zaire. Such cases are said to have been

frequent between March and June 1996. It is also alleged, but has not been possible to check, that the cards are then given to MAGRIVI or Interahamwe members not of Zairian nationality, thus enabling them to slip illegally into the local community and acquire land - and even to vote in the forthcoming elections.

80. The only exception was, as mentioned above, the Interahamwe assault on Kitshanga on 8 April, where the Division spéciale présidentielle protected the victims (see above, paras. 58, 59 and 61).

3. Impunity of the culprits

81. A third way in which the rights recognized under the Covenant are not respected is that the Zairian military and security forces are certain to go unpunished. In his second report the Special Rapporteur maintained that impunity is a real incentive to abuse of power, pillage and robbery; 10/ this argument remains fully valid and is implicit throughout this report.

B. Violation of the obligation to guarantee the rights recognized in the International Covenant on Civil and Political Rights

82. States must not be content simply not to violate human rights. The Covenant makes it incumbent upon them to guarantee the enjoyment of human rights and to protect the individual. 11/

83. The Special Rapporteur's impression during the visit under discussion was that, apart from inciting and participating in the ethnic violence and ensuring impunity, the basic attitude of the Zairian political and military authorities is to affect ignorance of events taking place in plain sight: "... it all happened as if there were no authority in the country ..." said one refugee in Rwanda.

84. Reports indicate that in response to public appeals for protection, "... the military prefer to remain in barracks". On other occasions indolence is combined with complicity: "... go home to Rwanda ..." soldiers said to Interahamwe victims as they proceeded to loot them.

85. This attitude dates back a long way. It is reported that MAGRIVI has been acting with Government connivance or inability to prevent its illegal activities since 1990 (see para. 33 above).

86. Ending the impunity of the Zairian armed forces and security services, removing the intimidators as agreed at Cairo, professionalising the Zairian armed forces, disbanding the MAGRIVI, sacking public officials who incite others to racial or national hatred, and disarming the refugee camps and the Interahamwe are all protective measures that could be taken and are desperately needed for putting an end to the conflict. The State's failure to take action is a breach of its duty of care since, in the Special Rapporteur's view, there can be no doubt that the lack of State involvement has been one cause of the violations that have occurred.

87. As in his earlier reports, the Special Rapporteur draws attention to efforts by Prime Minister Kengo to remedy these failings, calling for more members of the Zairian Armed Forces, but the indiscipline in the forces and the lack of equipment have made the conflict worse.

88. President Mobutu, who managed to pacify the country in the 1970s and even in 1993, does not now appear inclined to take the lead in restoring peace.

89. Government indifference is definitely a danger to the political process; the Minister of the Interior, Kamanda wa Kamanda, argued on 8 April 1996 that if the violence did not stop the elections scheduled for 1997 might be cancelled.

C. Violation of the obligation not to discriminate

90. All the incidents related in this report are based on legislation, attitudes and actions rooted in discrimination.

91. The Banyarwanda are discriminated against owing to the origins of their forebears, who not are not considered to be originally from Zaire although their nationality was recognized from 1960 to 1981. Thus they are denied the human right to a nationality, deprived of their property, driven from their homes and expelled into foreign countries.

92. But the discrimination is discriminatory in itself, for not all Banyarwanda are treated the same way: for ethnic reasons those belonging to the Tutsi ethnic group are discriminated against by those belonging to the Hutu ethnic group and Zairian Government officials, for it seems that the Zairian Government also has an interest in establishing a Hutuland.

93. Such legislation, attitudes and incidents are in themselves contrary to the obligations undertaken by the State in adhering to the Covenant, since they militate against the equality, dignity and inherent nature of all members of the human race, not being based on natural, legitimate differences between people (age, nationality, education, etc).

IV. MAIN RIGHTS VIOLATED

94. The point of the obligations set forth in article 2, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights is to "give effect to" - i.e. not establish simply as empty, illusory or theoretical - the human rights it covers. That these obligations have been breached is manifest in the fact that the following rights at least are not respected:

A. Right to life

95. The incidents described in this report have caused, according to a variety of sources, between 6,000 and 40,000 deaths over the past two years. It is not easy in Zaire to put a precise number on the assaults and other violations of rights, since the sources differ considerably, but many refugees interviewed in Rwanda, from many different cities and villages, often said that they had seen "hundreds of corpses".

B. Right to physical and mental integrity

96. The Special Rapporteur saw with his own eyes the marks of blows inflicted on a Zairian women refugee in Umubano with a nail-studded club (see para. 40 above) and was told of many violations of people's physical and mental integrity by members of the Zairian military, the Interahamwe and Hutu militias. The Ngilima May May have committed similar attacks, and all have gone unpunished.

97. The Special Rapporteur has also had the opportunity to ascertain that the practice of torturing individuals accused of common crimes, unrelated to the tribal or regional problems covered in this report, has remained current in Zaire. He personally observed the sequelae of torture in the cases of Ndikumvenayo Ntamuturano, Nzambazumunemyi Seburikoko, Nimyekure Habumana, Ditumana Charles, Bizagwina Dagumimana, and N. Nzabulunda, who are also being held at the ETAG detention centre in Rwanda. All are Zairian nationals from the Hutu ethnic group who were detained in Zaire in May in connection with a cattle theft. After being tortured they were expelled into Rwanda, a country with which they have no links at all, where they are now being held prisoner.

C. Right to nationality

98. As has been seen, Banyarwanda who came to Zaire between 1885 and 1960 were recognized as Zairian until 1981, at which time they were deprived of their nationality and left stateless. It should be added that the 1981 law was the result of a political choice by the Central Committee of the Mouvement populaire de la revolution during the Party-State period.

99. But many descendants of people who were living in the Congo before 1885 have also been expelled, being regarded as foreigners.

100. These people are all still stateless not only because of the way things are (neither they nor their forebears have ever lived in Rwanda or held Rwandan nationality) but also because of the Kigali Government's explicit announcement on 2 April 1996 that it did not recognize them as nationals. The announcement confirmed what the Special Rapporteur had said in his second report, namely that recognizing the Banyarwanda as Zairian would be no violation of the Transitional Constitution of 9 April 1994, article 7.2 of which prohibits double nationality, since Banyarwanda from ethnic groups in Rwanda had no nationality (E/CN.4/1996/66, para. 130).

101. The position taken by the Catholic bishops in Kivu, that it is a lie to say that the Banyarwanda are not Zairian, is thus to be applauded.

102. The Special Rapporteur also notes with concern that article 11 of a recent bill on a census needed for election purposes 12/ stipulates that Zairian nationality is to be proved, inter alia, by "the identity card for citizens", which makes the problem of the cards taken away from those expelled worse. If the cards are tampered with by simply changing the photographs and given to Hutu refugees in Zaire, the refugees will have the opportunity to cast fraudulent votes.

D. Right to live in one's own country

103. Refugees began to arrive in Zaire on 27 December 1995 and by 31 December 1995 numbered 1,200. According to the Office of the United Nations High Commissioner for Refugees, by 9 July Zairian refugees who had arrived in Rwanda by their own means or been forcibly expelled (Operation Café) numbered 12,625 in Umubano Camp and 849 in Nkamira Camp. Besides these, there are a number who for various reasons have abandoned the camps.

104. These refugees include Tutsis and Hunde but no Hutus, whereas if, as Banyarwanda, Hutus were of indeterminate nationality, they ought to be affected as well. Thus the political and doubly discriminatory nature of this breach of the right to live in one's own country, as recognized in article 12 of the International Covenant on Civil and Political Rights, can be clearly seen.

105. The only Hutus expelled were those mentioned in paragraph 97 above: in their case it is not only the right to live in their own country that has been violated, but also their right to physical integrity.

E. Right to choose one's own place of residence

106. The violence has resulted in enormous numbers of internally displaced people, for the most part but not exclusively Tutsi, since there are also displaced people from other ethnic groups in the region. In his second report, completed on 31 December, the Special Rapporteur said that according to various sources the displaced people numbered some 100,000. By 29 July 1996, according to his sources, they had reached 250,000 or maybe even 400,000.

107. It is reported that virtually no Tutsis remain in Southern Rutshuru or in Masisi generally.

F. Right to security

108. In his first report the Special Rapporteur sought to "draw particular attention to the right to security as an autonomous human right which is linked not only to individual liberty but to all the rights enjoyed by the human person as a simple corollary of his human status, because he believes that it is one of those rights that is least observed in Zaire" (para. 157).

109. The incidents described in this report only confirm that position, while besides the rights mentioned, the following have also been affected:

(a) The right to housing, since thousands of homes have been burned or taken over by the winners in each successive incident;

(b) The right to property, in thefts of cattle, assets and goods of every kind. Of the 400,000 or so head of cattle in the region before mid-1995, no more than 20,000 remain. Besides, a person who has taken someone else's cow sees no reason not to sell it for the equivalent of roughly $20, even if its real value is US$ 250;

(c) The entire range of economic, social and cultural rights: in current conditions no one can go to school, jobs have been lost, food is precarious and often dependent on donations, etc.;

(d) Rights of women, women having been most affected by the violence and insecurity.

V. REFERENCE TO THE SITUATION IN SOUTHERN KIVU

110. The Special Rapporteur dedicated a chapter of his second report to the conflict with the Banyamulengue in Southern Kivu, offering a brief historical overview and referring to the most serious acts of discrimination and human rights violations (E/CN.4/1996/66, paras. 33 to 37). The rebuttal by the Council of Ministers on 14 March 1996 challenges only this part of the report. 13/

111. The Special Rapporteur knew that that chapter of his second report would stir up controversy, for during his second visit to the country he was struck by the degree of hostility throughout Zairian society towards Rwandans and Zairians from ethnic groups considered to be from Rwanda. As he said in his report, "A strong anti-Rwandan feeling has arisen [in Zaire] which has permeated all political sectors. As one disillusioned human rights advocate said, "In order to succeed in politics, you have to be anti-Rwandan" (para. 26). The subject was pursued in the following paragraphs up to paragraph 30, and again in paragraph 123. Lastly, in paragraph 129, the Special Rapporteur recommended that the Government must "stop seeing enemies where there are none. It must abandon its aggressive language towards people of Rwandan and Burundian origin and must stop denigrating one ethnic group in the eyes of others".

112. Unfortunately, this recommendation has not been heeded by the Government, the political classes, or - worse yet - those who claim to be champions of human rights.

113. Indeed, on top of all the incitements to violence mentioned in paragraphs 65 to 74 above, one has to remember that the Governor of Southern Kivu called for immediate implementation of the HCR-PT resolution dated 28 April 1995 on the expulsion of all Rwandans.

114. It thus surprises the Special Rapporteur that only one group of refugees from Southern Kivu in Canada, and one Zairian citizen from the region now living in Egypt, rebutted the report. 14/ Unfortunately, the rebuttals just confirm his point: both describe the Banyamulengue as a group of "extremists" and exude the same ethnic and national hatred that inspired the HCR-PTU resolution, amounting to incitements to ethnic cleansing incomprehensible in people enjoying refugee status.

115. The reports received by the Special Rapporteur speak of a hardening of attitudes on both sides. For while the authorities are calling for the Banyamulengue to be expelled, the Banyamulengue admit that they are arming. Unfortunately the intention of the visit was not to analyse the situation in Southern Kivu. The information gathered is therefore only superficial and will not sustain more thorough analysis.

116. Nevertheless, the Special Rapporteur is alarmed by the reports he has received, and warns of the possibility that what has recently been taking place in Northern Kivu may recur in like vein in Southern Kivu.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

117. The conflict with which this report is concerned, like the one developing in Southern Kivu, has been virtually ignored by the international community, reluctant, perhaps, to have its conscience pricked again after the horrors of Rwanda and Burundi.

118. It is a dispute in which a great many people have been suffering violations of a large number of their rights. Those responsible are:

(a) The State of Zaire, which has been directly involved in and has incited people to commit such violations, and has not made sufficient effort either to prevent or to restrain them;

(b) The political class, which has fomented xenophobic nationalist sentiment;

(c) Some ethnic leaders, who do not conceal the fact that they are arming, albeit to defend themselves; and, regrettably, also

(d) Some human rights organizations, which have chosen to foster racial hatred and ethnic cleansing rather than defending the oppressed.

119. The Special Rapporteur is not overlooking the enormous difficulties that the massive influx of refugees from the war in neighbouring Rwanda poses for the people and Government of Zaire. On the whole, Zaire has reacted as it should, facilitating the work of UNHCR and, with some exceptions, honouring the principle of non-refoulement. In any event it must make it clear once and for all, in word and deed, that there will be no repetition of the cases such as those in 1995 when refugees were expelled to countries where they had well-grounded fears of persecution on account of their racial or national origins.

120. But the most important finding of this report is that the conflict is neither solely regional nor solely national. Julius Nyerere, the former President of the United Republic of Tanzania, has said as much, maintaining that the interethnic conflict has now become international.

121. The conflict in Zaire and the Great Lakes region is in fact nothing more than a prolongation of the events that have taken place in Rwanda and Burundi - the causes and the effects. The existence of the Interahamwe represents a threat to peace in Zaire, Rwanda, Uganda and Burundi. Many accounts from refugees in Rwanda, and more from the staff of specialized agencies and non-governmental organizations, say that the Interahamwe are attacking Rwanda looking for survivors of the genocide (the rescapés) so as to prevent them from testifying in court by exterminating them physically.

122. There was even a report from Uganda on 16 April 1996 that Rwandan opposition militias had entered the country from Zaire and attacked a military post in Kisoro, forcing Uganda to close its borders. Subsequently the Government of Zaire lodged a complaint against Uganda for an attack mounted from Uganda.

123. The Special Rapporteur has received numerous reports of Interahamwe crossing the border from Zaire into Rwanda to murder survivors, leaving many people dead. A member of Parliament for the Mouvance présidentiel, Mr. Vangu Manbweni, went so far as to state, on 2 May 1996, that Parliament would be ready to declare war on Rwanda if the motion were placed before it. And on 6 May 1996 the Zairian Minister for Foreign Affairs complained about accusations from the Governments of Rwanda and Burundi that their countries felt threatened by incursions mounted from Zaire, according to a statement by the United Nations Under-Secretary-General for Political Affairs.

124. The border between Zaire and Burundi was closed in April 1996 for fear of incursions by Rwandan refugees, and although Prime Minister Kengo visited Bujumbura in May it has not been reopened.

125. These were the reasons why, at their first meeting, the Special Rapporteurs of the Commission on Human Rights on the countries in the Great Lakes region pointed out that there were features in common - particularly population movements, illegal arms sales and incitement to racial hatred (E/CN.4/1996/69, annex, paras. 13 to 15), and why they called on the Commission to take an all-encompassing approach to the region (para.18).

B. Recommendations

1. To the Zairian authorities and people

126. The Special Rapporteur finds himself obliged to repeat some of the broad and specific recommendations on the region he made in his first two reports, besides proposing other action in the light of what he saw during his mission:

(a) Concerning the armed forces and security services:

(i) Effective, genuine and practical control must be established over the State security apparatus, with the police being placed under the Ministry of the Interior and the Zairian Armed Forces under the Ministry of Defence, both being answerable to the Prime Minister, not the President. The powers of each service must be precisely regulated (E/CN.4/1995/67, para. 257);

(ii) All corrupt officials must be removed from office;

(iii) An end must be put to impunity (E/CN.4/1996/66, para. 121);

(iv) Membership of the Zairian Armed Forces and security services should be multi-ethnic (E/CN.4/1996/69, annex, para. 17(a)).

(b) Tolerance. The authorities and the political class must accept that Zaire is a country made up of many ethnic groups who have arrived in the region over the centuries, and that they must all share the land, political power, wealth and poverty (E/CN.4/1995/67, para. 259; E/CN.4/1996/66, paras. 123 and 129; E/CN.4/1996/69, annex, para. 17 (e)). This recommendation applies the more urgently to non-governmental organizations, especially those concerned with human rights. If they do not make individuals - whatever ethnic group they come from - and their rights the prime focus of their operations, preferring partisan political activity or, worse yet, fomenting discrimination, they not only do irreparable moral harm but also betray the international non-governmental organizations movement;

(c) Nationality. The problem of nationality, which the conflict in Kivu is currently exacerbating, must be resolved: not only are Hutus, Tutsis and Twa who arrived in the Congo region after 1885 being deprived of their nationality, but people who arrived earlier are, too, as the Special Rapporteur was able to appreciate with the refugees in Rwanda (E/CN.4/1996/66, para. 130). The HCR-PT agreement of 28 April 1995 must be repealed. There are three further problems relating to nationality and citizenship which must also be tackled in accordance with the following criteria:

(i) The Zairian refugees expelled to Rwanda must be given back their identity cards or issued with new ones;

(ii) The identity cards taken away from expellees and given to Rwandan Hutus, many of them members of the Interahamwe, must be recovered;

(iii) Lastly, the bill on the pre-election census now before the HCR-PT must incorporate provisions enabling all Zairians to vote but no one else, even upon presentation of a card that used to belong to an expellee.

(d) Removal of all the "intimidators" from the area: the process already embarked upon must be pursued;

(e) Repatriation of refugees. A programme for repatriating all the Zairian refugees in Rwanda must be set up, covering:

(i) Restoration of property to its rightful owners;

(ii) Reparations for damage and injuries;

(iii) Effective security measures to prevent and punish any hint of ethnic or national rivalry;

(iv) Safeguards for the exercise of all civil, political, economic, social and cultural rights.

(f) Respect for Rwandan refugees. The problem of the Rwandan refugees in Zaire must be dealt with; this will only be possible with the agreement of

the Governments and peoples of all three countries involved and with strict regard for the principle of non-refoulement and voluntary repatriation (E/CN.4/1995/67, para. 275; E/CN.4/1996/66, para. 131);

(g) Disarmament. The Zairian Government must proceed without delay to disarm the armed groups - first and foremost the Interahamwe, MAGRIVI, the Ngilima, Banguirima and May May, but also any other organization that has armed for the purpose of attack or of defending itself;

(h) Human rights, democracy and the rule of law. The recommendations on this subject in the previous reports remain entirely valid (E/CN.4/1995/67, paras. 260, 264, 266, 267 to 269; E/CN.4/1996/66, paras. 125 to 128; E/CN.4/1996/69, annex, para. 17 (a) and (b));

(i) Extradition of individuals accused of genocide to be tried by the International Criminal Court investigating the crimes committed in Rwanda (E/CN.4/1996/66, para. 132);

(j) Safety of internally displaced persons. Internally displaced persons must be allowed the right to choose where to live, in particular the right to set up their homes in places they have been driven away from by physical or moral coercion. The Government must establish resettlement programmes for this purpose, covering housing, education, health and, above all, security for all, especially women and children;

(k) Cooperation by the Zairian Government with the Commission on Human Rights and in particular the Special Rapporteur. The Special Rapporteur is sorry not to have had a timely response from the Government to his request to visit the country while on mission for the United Nations High Commissioner for Human Rights. This report could then have reflected the official view of the events described, as well. The Special Rapporteur has submitted to the Government a series of human rights violations brought to his attention, but has had no response. He has also suggested that he might visit the country between 14 and 26 October, and hopes that this will be accepted;

(l) Observer mission. In his first report (E/CN.4/1995/67) the Special Rapporteur suggested an office comprising two experts on human rights in Zaire to monitor the human rights situation and keep him informed and to give technical assistance to the Zairian authorities and people (para. 277). In resolution 1995/69, the Commission invited the High Commissioner to study this suggestion. The Special Rapporteur repeated his suggestion in his second report (E/CN.4/1996/66), detailing the communications the High Commissioner has had with Zaire on the subject (paras. 9 to 11 and 134). At the fifty-second session of the Commission, on 15 April 1996, the Zairian delegation announced that the proposed agreement would be signed in the next few days. After drafting on the present report had concluded, the United Nations High Commissioner for Human Rights told the Special Rapporteur that the protocol of agreement between the Government of Zaire and the United Nations on the opening of a human rights office in Zaire had been signed on 21 August 1996. The Special Rapporteur hopes this agreement will significantly advance respect for human rights in Zaire. He also trusts that

the office will be set up as quickly as possible and warmly recommends that, given the events taking place in Northern and Southern Kivu, the office should be able to set up branches with observers in Goma and Bukavu.

2. To the international community

127. For his recommendations to the international community the Special Rapporteur will simply repeat what he said in his first report: "One observation heard by the Special Rapporteur in Washington, in Mbuji-Mayi, in Geneva, in Kinshasa, in Brussels and in Goma, from journalists, lawyers, political specialists, diplomats and members of the military, and one which may be inferred from the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, is that if the political situation in Zaire explodes, its consequences will be far greater than those in Rwanda or Burundi. The current level of tension and the tribal and regional rivalries that have been stirred up, and have been further inflamed by the huge inflow of Rwandan refugees, give reason to fear this may occur. The international community, and in particular those countries with historical responsibilities in the region, cannot disregard a situation of this scale. The Special Rapporteur's conscience would not be clear if he failed to express his opinion in this respect. Preventive diplomacy is urgently required, although the Special Rapporteur believes that any such diplomatic measures cannot be aimed at reinforcing the status quo, as there is no certainty that an irreplaceable guarantor of stability exists. Zaire's transition cannot be postponed. Friendly countries could bring their diplomatic and political influence to bear in order to resolve the current conflicts in Zaire" (E/CN.4/1995/67, para. 274). That was written more than two years ago, and events have heightened the fears of that time.

128. Spread of the conflict. The international community must be alert to what is happening in Kivu, and to efforts by international organizations to stave off the cruellest consequences of a disaster already in the making.

129. United Nations or Organization of African Unity military observers in the region. This suggestion has been put forward on various occasions but the necessary agreement has never been reached. The Special Rapporteur considers that, given the level of ethnic confrontation in the Great Lakes region and the increasingly international nature of the conflict, aggravated by the sense that the Zairian Armed Forces are not capable of dealing with it in Zaire and may even have made things worse, the only possible way of preventing the violence from spreading is to dispatch military observers to the region.

130. Extraordinary session of the Commission on Human Rights. At their first meeting, the Special Rapporteurs on the human rights situations in Burundi, Rwanda and Zaire suggested that the Commission on Human Rights should adopt a global resolution on the region (E/CN.4/1996/69, annex, para. 18). The Special Rapporteur, having discussed the situation in the region with the Special Rapporteurs on Burundi and Rwanda, ventures to suggest an extraordinary session based on the Special Rapporteurs' latest reports, including this one, since the Economic and Social Council, in resolution

1990/48 and decision 1993/286, has authorized the Commission to meet exceptionally between its regular sessions in the event of urgent or acute human rights situations.

131. Coordination of the High Commissioner's operations in the three countries. The three Special Rapporteurs also recommended that the operations of the High Commissioner should be extended to the three countries in the region and that observers should be deployed. They recommended that human rights should form an integral part of United Nations strategy in the region (E/CN.4/1996/69, annex, para. 17 (f)). The Special Rapporteur wishes to emphasize this recommendation.

132. Representation of the Commission on Human Rights in the bodies deliberating on and taking decisions for the region. The Special Rapporteur also emphasizes the need for the Commission's Special Rapporteurs to attend conferences, seminars, symposia and other activities relating to the region, as they stated in the report of their first meeting (E/CN.4/1996/69, annex, para. 17 (l)).

3. To United Nations bodies

133. The Special Rapporteur is obliged to draw attention to a lack of coordination among the United Nations bodies concerned with the topic of human rights.

134. On this subject, the World Conference on Human Rights held in Vienna in 1993 recommended: "... increased coordination in support of human rights and fundamental freedoms within the United Nations system" (A/CONF.157/23, para. II.1). Sundry other paragraphs of the Vienna Declaration and Programme of Action also emphasize coordination.

135. This was why the three Special Rapporteurs for the Great Lakes countries (Réné Degni-Ségui for Rwanda, Paulo Sergio Pinheiro for Burundi and the present writer for Zaire) stressed, at their first coordinating meeting in Geneva, on 18 and 19 January 1996, the need for them to take part in and be kept informed of other United Nations bodies dealing with matters relevant to their mandates (E/CN.4/1996/69, annex, para. 17 (g), (h) and (l)).

136. Likewise, at the yearly meeting of special rapporteurs and chairpersons of working groups in Geneva, on 28-30 May 1996, several participants spoke of the grave lack of coordination among the various bodies and agencies of the United Nations dealing with human rights issues and that the situation seriously undermined efficiency. The meeting suggested that the High Commissioner should forge stronger links with the rest of the system (see E/CN.4/1996/50).

137. The Special Rapporteur has noted the dispatch by the Secretary-General of the United Nations of a team from the Department of Humanitarian Affairs to discuss the problem of ethnic violence in the Northern Kivu district with the Zairian Government so as to be able to cope with the humanitarian needs attendant on the crisis. The mission, which was prompted by the events in Mokoto and took place between 30 May and 7 June, focused on ethnic violence, a subject which the Special Rapporteur covered in his first two reports.

138. Another United Nations mission sent to Zaire this year to evaluate the electoral process pointed out in a summary that almost all the people interviewed mentioned, as a prerequisite for the elections to take place, the implementation of the 1981 Nationality Act; the Special Rapporteur furnished precise guidelines on this subject in his first two reports (E/CN.4/1995/67, paras. 122-124, 243-247 and 264; E/CN.4/1996/66, paras. 57-63, 117 and 120). In the Special Rapporteur's view the result, if the Act is indeed implemented but so interpreted as to deny Zairians their nationality, will be a serious violation of human rights, as this report has shown.

Notes

1/ North or Northern, and South or Southern, Kivu are used interchangeably.

2/ They sometimes refer to themselves by other names, such as that of the district they live in: e.g. the Banyabwisha.

3/ The Tutsi refugees who fled to Zaire in the first months of the fighting in 1994 have also gone back to Rwanda.

4/ National deputies Ciprian Rwakabuba (The national leader of the Mouvement populaire de la révolution (MPR)); Phogas Sebakunzi; Emmanuel Rwiyereka; Mrs. Kanamahalagi Mburanuhwe; Gataliki; François Mpagazihe. Ministers of State Léonard Senseyi and Nepomusene Rwiyereka. Catholic bishop Mgr. Patient Kanyamachumbi. The Director of the National Bank, Damien Munyarucendo. University professors Deogratias Mbonyinkebe, Joseph Mulinda, Célestin Kalimba. Deputy Gstaliki, Minister Rwiyereka Nepomusene and the adviser to the Governor of Northern Kivu, Joseph Mwangachuchu, all came to Zaire this century. The current Minister of Higher Education and Scientific Research, Sekimonyo wa Magango (a Hutu).

5/ Thirty-one are said to be being held by the Service d'action et des renseignements militaires, and 13 by the Service national d'intelligence et de protection.

6/ Zairian Camp Security Operation (ZCSO). See the second report, E/CN.4/1996/66, para. 47.

7/ E/CN.4/1995/67, paras. 61-76, 94, 99, 102, 145-169, 184, 201, 249, 258; E/CN.4/1996/66, paras. 45, 47, 69-81, 88, 89, 97, 121-123.

10/ Impunity is discussed in paras. 77-84, 249 and 261 of the first report (E/CN.4/1995/67) and paras. 77 ff. and 121 of the second (E/CN.4/1996/66).

11/ The Special Rapporteur discusses this in paras. 156-159 and 257 of the first report (E/CN.4/1995/67) and paras. 75 and 122 of the second (E/CN.4/1996/66).

12/ Projet portant organisation de l'identification des nationaux, du recensement de la population et de l'enrolement du corps électoral.

13/ The Council of Ministers' statement also finds fault with the Special Rapporteur's supposed suggestion, which he has never made, of absorbing the Rwandan refugees in Zaire. What the Special Rapporteur did recommend was that the principle of non-refoulement established by the 1951 Convention relating to the Status of Refugees should be respected.

14/ The criticisms focused on two points: (a) the report spoke of the Banyamulengue who numbered "some 400,000 individuals". The lack of censuses in Zaire makes it hard to give an exact figure. The sources cited by the group in Canada gave different figures: one said there had been only 270 individuals in 1954; another, that there were 6,000 in 1956; a third said they now number 12,000, and yet another says 14,000. The sources interviewed by the Special Rapporteur showed him figures around the 350,000 mark, but insisted that there were "over 500,000". In any case, if there were fewer than 20,000, the violence this argument has developed would defy explanation; (b) the Banyamulengue arrived in the region not in the eighteenth century, as the report says, but in the twentieth. The self-styled "original" inhabitants and the Banyamulengue drew on a variety of chroniclers. Paradoxically, these are often the same - it is the interpretation of what they say that differs. The self-styled original inhabitants appear to believe that before colonization there were rigid boundaries, whereas all authors stress that until the Berlin Conference the boundaries were only approximate, and there is no question of the Rwandan Kingdom of Urundi having included districts that now belong to Zaire. The Special Rapporteur points out, in any event, that in his statement to the fifty-second session of the Commission on Human Rights the Minister of Justice, Mr. Joseph N'Singa Udjuu, said it "must be recognized that Rwandan immigration into the Fizi, Mwenga and Uvira districts of Southern Kivu dated from the same period as the immigration into Northern Kivu".